

State of Colorado



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Meeting Minutes July 18, 2006

The State Personnel Board met in public session on Tuesday, July 18, 2006, at the Colorado State Personnel Board, 633 17th Street, Suite 1400, Courtroom 1, Denver, Colorado 80202-3604.

The meeting was called to order at approximately 9:04 a.m. Board Members Rich Djokic, Don Mares, and John Zakhem were present in person. Board Member Diedra Garcia was absent.

Kristin F. Rozansky, Board Director; Assistant Attorney General Pam Sanchez, Board Counsel; and Jane Sprague, General Professional III, were present in person.

ANNUAL ELECTION OF BOARD CHAIR AND VICE-CHAIR FOR FISCAL YEAR 2006 – 2007

Mr. Djokic moved and nominated Mr. Zakhem for Chair of the Board for Fiscal Year 2006-2007. Mr. Mares seconded the motion. The nominations for Board Chair were closed by consensus. The nomination of Mr. Zakhem as Board Chair passed by acclamation.

Mr. Zakhem moved and nominated Mr. Djokic for Vice-Chair of the Board for Fiscal Year 2006-2007. Mr. Mares seconded the motion. The nominations for Board Vice-Chair were closed by consensus. The nomination of Mr. Djokic as Board Vice-Chair passed by acclamation.

I. REQUESTS FOR RESIDENCY WAIVERS

A. July 1, 2006 Report on Residency Waivers

Director Rozansky reported that seven requests for residency waivers have recently been filed at the Board. The residency waiver request for a Telecommunications-Electronics Specialist for the University of Colorado at Boulder was granted. Two residency waiver requests from the

Department of Human Services, for the Superintendent of the Colorado Mental Health Institute at Pueblo and the Manager of the Drug and Alcohol Unit Program, were denied on the grounds they had not been through the competitive testing process. The Director issued a request for supplemental information for the residency waiver request for a Fingerprint Examiner for the Department of Public Safety. Two resident waiver requests from the Department of Corrections are under review by the Director.

II. PENDING MATTERS

A. Cases on Remand

1. Jeanette E. Aragon v. Department of Corrections, San Carlos Correctional Facility, State Personnel Board case number 2003B223, Court of Appeals No. 04CA2521.

Mr. Djokic moved to remand the matter to the Administrative Law Judge for a hearing on Complainant's claim for attorney fees and costs, in compliance with the Mandate of the Court of Appeals, and moved that that portion of the October 19, 2004 Order Denying Motions for Attorney Fees and Costs, Vacating June 1, 2004 Hearing, and Dismissing Appeal of the Administrative Law Judge which denies Complainant's request for an entry of judgment is affirmed, in compliance with the Mandate of the Court of Appeals. Mr. Zakhem seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Djokic, Mr. Mares, and Mr. Zakhem.

B. Petitions for Declaratory Order

1. Petition for Declaratory Order of the Colorado Federation of Public Employees (CFPE) v. Department of Personnel and Administration, State Personnel Board case number 2006D003.

Since Mr. Mares and Mr. Djokic were recused from participation in the consideration of this matter, there was no quorum for action, and the matter was tabled until the August Board meeting.

III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR ON APPEAL TO THE STATE PERSONNEL BOARD

There were no Initial Decisions or other Final Orders of the Administrative Law Judges or the Director on appeal to the Board this month.

IV. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR TO GRANT OR DENY PETITIONS FOR HEARING

- A. Kimberly E. Temple v. Department of Revenue, Division of Gaming, State Personnel Board case number 2006G059.

Mr. Mares moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing, and on the additional grounds that the Board lacks jurisdiction over Complainant's claim of defamation. Mr. Djokic seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Djokic, Mr. Mares, and Mr. Zakhem.

V. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR

- A. Frank Irions v. Department of Corrections, Denver Women's Correctional Facility, State Personnel Board case number 2004B024 (June 12, 2006).
- B. Dorothy Emerson v. Department of Human Services, State Personnel Board case number 2005B097 (June 29, 2006).
- C. Lynn Redden & William Kaberlein v. Department of Labor and Employment, State Personnel Board case number 2005G094(C) (July 6, 2006).

VI. REVIEW OF THE MINUTES FROM THE JUNE 20, 2006 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

Lacking a quorum to adopt the Minutes of the June 20, 2006 meeting, as Mr. Djokic was not yet a Board member and Mr. Zakhem was not present at that meeting, the Board tabled consideration of the Minutes of the June 20, 2006 meeting until the August meeting.

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS JUNE 20, 2006 PUBLIC MEETING:

- A. Terry J. Miller v. Department of Higher Education, University of Northern Colorado, State Personnel Board case number 2005B112.

The Board voted to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge and to adopt the Initial Decision of the ALJ.

- B. Patrick Ward v. Department of Natural Resources, Division of Wildlife, State Personnel Board case number 2004B143.

The Board voted to remand the matter to the Administrative Law Judge solely for legal analysis regarding the fifth prong of the test for a *prima facie* case of discrimination based on disability, as enunciated in *Community Hospital v. Fail*, 969 P.2d 667 (Colo. 1998), including, if necessary, holding an evidentiary hearing and reopening discovery. The decision is to be issued within thirty days of the signing of this Order and, if appealed to the Board, is to be handled under the Board rules applicable to such appeals.

- C. Nancy Resnick v. Department of Human Services, Colorado Mental Health Institute at Fort Logan, State Personnel Board case number 2005G021.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

- D. Sean McGuire v. Department of Revenue, State Personnel Board case number 2004G080(C).

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

- E. Simone Belmonte v. Department of Corrections, Training Academy, State Personnel Board case number 2005G101.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

VIII. REPORT OF THE STATE PERSONNEL DIRECTOR

There being no one present from the Director's office, no report was given.

IX. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Cases on Appeal to the Board and to Appellate Courts

B. OTHER BOARD BUSINESS

- Staff Activities

Director Rozansky reported that the next Board meeting would be in Glenwood Springs on August 15, 2006, at the Colorado Department of Transportation (CDOT). A CDOT van and driver will take the Board members on a tour of the Hanging Lake Tunnel, and the Board members will have an opportunity to "meet and greet" employees of CDOT prior to the meeting.

Another staff activity was the attendance of Administrative Law Judges Denise DeForest and Hollyce Farrell at the National Judicial College's Basic Administrative Adjudication training in Reno, Nevada. The Director stated that she would like to have all of the Board's ALJs participate in three courses - the NJC's basic administrative adjudication and evidence courses and a weeklong mediation course. ALJ McClatchey has completed all three courses; ALJ Farrell has completed two of these trainings, including basic training and mediation; and ALJ DeForest has completed the basic administrative adjudication training.

Another activity the Director reported on was the construction of an office at the Board, for which she thanked Kruz Watkins for assisting in all aspects of the construction process and Jane Sprague for filling in for the Director during her vacation.

Mr. Zakhem proposed that the Board adopt a business plan with goals and objectives to be discussed at the next Board meeting, including what the Board members want to see the Board accomplish in the next year. Mr. Mares suggested that Board members spend one half hour to an hour to engage in a "brainstorming" session.

C. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC

X. PROPOSED LEGISLATION AND/OR RULEMAKING

Director Rozansky announced that there will be rulemaking at the August meeting to amend Board Rule 4-28 (trial service), as a result of the recent Court of Appeals opinion, *Martinez v. Department of Personnel*.

The Board declined to go into Executive Session, and the meeting was adjourned by consensus of the Board members.

XI. EXECUTIVE SESSION

- A. Case Status Report
- B. Minutes of the June 20, 2006 Executive Session

C. Other Business

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APPROVED THIS 15th DAY OF AUGUST, 2006.

John Zakhem, Board Chair

Rich Djokic, Member

Donald J. Mares, Member